IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :24.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.812 & 813 of 2004

Crl.R.C.No.812/2004

K.Subramaniam ..Petitioner/accused

vs.

M/s Satramdas Maheshkumar
rep. By its Partner Maheshkumar ..Respondent/complainant

Crl.R.C.No.813/2004

K.S.Ramkumar .. Petitioner/accused

vs.

K.S.Maheswaran .. Respondent/complainant

These Revisions are filed against the Judgment dated 22.03.2004 passed by the Additional District and Sessions Judge,Fast Track Court No.2,Salem in C.A.NO.20/2003 and C.A.No.11/2003 respectively confirming the Judgment dated 28.1.2003 and 14.1.2003 respectively passed by the Judicial Magistrate No.3,Salem in C.C.Nos.607/2000 and 171/2000 respectively.

For Petitioner : Mr.K.Selvaraj
(in both revisions)

For Respondent : Mr.P.Sukumar
(in Crl.R.C.No.812/2003)
(in Crl.R.C.No.813/2003) : Mr.B.Kumarasamy

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C O M M O N O R D E R

Crl.R.C.No.812 of 2004 has been preferred by the revision petitioner challenging the Judgment in C .A.No.20/2003 on the file of Additional District and Sessions Judge/Fast Track Court No.2, Salem which had arisen out of a Judgment in C.C.No.607/2000 on the file of Judicial Magistrate NO.3, Salem.

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Crl.R.C.No.813 of 2004 has been preferred by the revision petitioner arises out of a Judgment in C.A.No.11/2003 on the file of the Additional District and Sessions Judge/Fast Track Court,No.2, Salem which emantes from a Judgment in C.C.No.171/2000 on the file of Judicial Magistrate, No.3, Salem.

Crl.R.C.No.812/2004:

2. The complainant has preferred a private complaint under Section 200 of Cr.P.C. against the accused for an 0ffence punishable under Section 138 of Negotiable Instruments Act,1881 (hereinafter referred to " the Act").

3. The complaint was taken on file by the learned Judicial Magistrate, after taking cognizance of the same and after the accused appeared on summons, copies under Section 207 of Cr.P.C were furnished and the offence was explained to the accused and questioned the accused pleaded not guilty.

4. On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P11 were marked.

5. P.W.1 is the power of Attorney holder of the complainant company who would depose that the accused had borrowed a sum of Rs.7,00,000/- from the complainant company on 8.7.1998 and executed three promissory notes and out of the borrowed amount, 50% ie., Rs.3,50,000/- was paid by the accused and the amount remains to be paid by the accused comes to Rs.3,50,000/- and in order to discharge the said amount of Rs.3,50,000/-, the accused had drawn a cheque Ex P5 for Rs.1,00,000/- in favour of the complainant on 25.9.1999 and when the said cheque was presented in the Bank for collection, the same was returned with an endorsement that there is no sufficient funds in the account of the accused . Exs P6 and P7 are the debit advice and returned memo respectively dated 27.9.1999 sent along with the impugned cheque Ex P5 by the bank. A notice under the original of Ex P8 dated 8.10.1999 was sent by the complainant to the accused, which was acknowledged by the accused on 11.10.1999 under Ex P9. But the accused had failed to send any reply notice nor took any steps to discharge the balance of the loan amount. Exs P1 to P3 are the copy of the promissory notes and Ex P.4 is the copy of the power of attorney deed in favour of P.W.1.

5a. P.W.2 is the Manager of Andhra Bank , Salem Town in which the complainant is having his account. According to P.W.2, Ex P5 impugned cheque was presented for collection on 25.9.1999 but the same was returned with an endorsement that there is no sufficient fund in the account of the accused to honour the same.

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5c. P.W.3 is the Manager of Canara Bank , Salem wherein the accused is having his account. According to him, the impugned cheque Ex P5 was forwarded to his bank from Andhra Bank on 25.9.1999 for collection, but the same was returned with an endorsement that there is no sufficient funds in the account of the accused to honour the same. Ex P11 is the statement of account for the accused's account.

6. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. Ex D1 the reply notice was marked on the side of the accused.

7. After going through the evidence both oral and documentary, the learned trial Judge has come to a conclusion that only in order to discharge the subsisting liability, Ex P5 impugned cheque was drawn by the accused in favour of the complainant and that the accused is liable to be convicted under Section 138 of the Act and accordingly convicted the accused and sentenced him to undergo six months rigorous imprisonment and also directed the accused to pay a compensation of Rs.1,00,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before the Sessions Judge in C.A.No.20 of 2003 on the file of Additional District and Sessions Judge, Fast Track Court, No.2, Salem. The learned first appellate Court , after giving due deliberation to the submissions made by the counsel appearing for both sides, and after scanning the evidence adduced before the trial Court, has ultimately concurred with the findings of the trial Judge, thereby confirming the Judgment of the trial Court, which necessitated the accused to approach this Court by way of Crl.R.C.No.812/2004.

Crl.R.C.No.813/2004:

8.According to the complainant in C.C.No.171 of 2000, the accused had borrowed a sum of Rs.50,000/- and to discharge the said loan, had drawn Ex P1 cheque dated 1.11.1999 in favour of the complainant and when the said cheque was presented in the bank for collection on 21.1.2000, the same was returned with an endorsement that there is no sufficient funds in the account of the accused to honour the same. A notice under the original of Ex P4 was sent by the complainant on 22.1.2000, which was received by the accused on 24.1.2000 under Ex P5 acknowledgment.

9. After taking cognizance of the complaint, the learned Judicial Magistrate has issued summons to the accused and on his appearance furnished copies under Section 207 of Cr.P.C. and when the offence was explained to the accused and questioned, the accused pleaded not guilty.

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10. On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P8 were marked.

10a. P.W.1 is the complainant, who would corroborate, what he has sworn to before the trial Court in the complaint.

10b. P.W.2 is the Manager of the Bank in which the complainant is having his account. P.W.3 is the manager of the Bank in which the accused is having his account. Both P.W2 and P.W.3 would admit that the impugned cheque Ex P1 was returned on presentation on the ground that there is no sufficient funds in the account of the accused. Exs P2 and P3 are the returned memo and debit advice respectively sent along with Ex P1 impugned cheque. Ex P6 is the copy of the statement of account for the complainant. ExP7 is the power of Attorney in favour of P.W.1. ExP8 is the statement of account of the accused.

11. When the incriminating circumstances were put to the accused, he denied his complicity with the crime.

12. After going through the evidence both oral and documentary, the learned trial Judge has come to a conclusion that the complainant has proved the guilt of the accused beyond any reasonable doubt and accordingly convicted the accused under Section 138 of the Act and sentenced him to under go four months rigorous imprisonment and awarded a sum of Rs.50,000/- as compensation with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal in C.A.No.11 of 2003 on the file of Additional District and Sessions Judge, Fast Track Court, No.2, Salem. The learned first appellate Court , after giving due deliberation to the submissions made by the counsel appearing for both sides, and after scanning the evidence adduced before the trial Court, has ultimately concurred with the findings of the trial Judge, thereby confirming the Judgment of the trial Court, which necessitated the accused to approach this Court by way of Crl.R.C.No.813/2004.

13. Now the point for determination in these revisions is whether the Judgments in C.A.No.20/2003 and C.A.No.11 of 2003 respectively on the file of the learned Additional District and Sessions Judge/Fast Track Court No.2,Salem are liable to be set aside for the reasons stated in the memorandum of the respective revisions?.

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14. Heard Mr.K.Selvaraj, learned counsel for the revision petitioner in both the revisions and Mr.P.Sukumar, learned counsel appearing for respondent in Crl.R.C.No.812 of 2004 and Mr.B.Kumarasamy, learned counsel appearing for the respondent in Crl.R.C.No.813 of 2004 and considered their respective submissions.

15.The Point:
There is absolutely no defence taken neither before the trial Court nor before the first appellate Court by the accused. The complainant has proved his case by producing two impugned cheques Ex P5 in C.C.No.607/2000 and Ex P1 in C.C.No.171/2000 before the trial Court to show that the accused in both the cases have drawn a cheque in favour of the complainant in both the cases respectively only in order to discharge the subsisting liability. The evidence of the bank officials viz., P.W.2 and P.W.3 in C.C.No.607/2000 and P.W.2 and P.W.3 in C.C.No.171/2000 will go to show that the impugned cheques viz., Ex P5 in C.C.No.607/2000 and Ex P1 in C.C.No.171/2000 were dishonoured on the ground that there was no sufficient funds in the account of the accused in the cases above which attracts an offence under Section 138 of the Act.

16. Now coming to the question of sentence, both the Counsels on record would contend that the ratio decidenti in Goa Plast (P) Ltd.,-v- Chicl Ursula D'Souza(2004)2 Supreme Court Cases 235) can be followed in these revisions also. The exact observation in the abovesaid ratio runs as follows:

> .....We have no doubt that the respondent has committed an offence punishable under the provisions of Section 138 of the Act and is liable to be punished. The transaction in question took place between the parties in the year 1993, therefore, Section 138, as it stood at the relevant time, would be applicable to the present case. Section 138 provides imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both,. Section 138 has now been amended and the penalty of imprisonment for a term which may extend to one year has been substituted by two years as provided by the amending Act of 2002 and the fine which may extend to twice the amount of the cheque. This has been prescribed as the punishment for the offence under Section

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> 138 of the Act..The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious set back. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a Civil Court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defect the genuine claim of the payee."

After observing as mentioned above, the Honourable Apex Court has convicted the accused under Section 138 of the Act and awarded a compensation of Rs.80,000/-(twice the amount of cheque) giving a months time to the accused to pay the same with default sentence. Following the principle enunciated in the above said dictum,I am of the view that instead of giving any sentence, the accused can be directed to pay twice the amount of the cheque in these revisions also. The point is answered accordingly.

17. In fine, Crl.R.C.No.812 of 2004 is dismissed,but the sentence alone in C.A.No.20/2003 is modified as follows: A months time is granted to pay a sum of Rs.2,00,000/-(twice the amount of cheque), after giving credit to the payment already made by the accused, to the complainant,in default the revision petitioner/accused shall suffer simple imprisonment for six months.

In fine, Crl.R.C.No.813 of 2004 is dismissed ,but the sentence alone in C.A.No.11/2003 is modified as follows: A months time is granted to pay a sum of Rs.1,00,000/-(twice the amount of cheque), after giving credit to the payment already made by the accused, to

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the complainant,in default the revision petitioner/accused shall suffer simple imprisonment for four months.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Additional District Sessions Judge,
   Fast Track Court,No.2,Salem.

2. Do Through The Principle Sessions Judge,Salem

3. The Judicial Magistrate No.3, Salem.

4.-do- the Chief Judicial Magistrate, Salem.

+ 2 cc to Mr. K. Selvaraj, Advocate, SR No.45580, 45581

+ 1 cc to Mr. P. Sukumar, Advocate, SR No.45850

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